

2003/0063456 A1); such rejections are traversed in that applicants submit that Akiyama is not properly utilizable under 35 USC 102 or 35 USC 103.

Although the Examiner applies Akiyama under 35 USC 102(e), applicants note that while Akiyama is based on an International Application filed after November 29, 2000, i.e., PCT/JP02/10085, as is apparent from the PAIR records of the US Patent and Trademark Office, the filing or 371(c) date for Akiyama is March 26, 2004, and Akiyama does not have a 35 USC 102(e) date, based upon the flow charts for 35 USC §102(e) dates appearing at MPEP §706.02(f)(1). That is, while the International Application was published by WIPO as WO 03/029884 A1, the WIPO publication was not in English, but rather in Japanese, even though an English language abstract was published. Accordingly, irrespective of the contentions by the Examiner, Akiyama is not entitled to a 35 USC 102(e) date in accordance with the requirements therefor. As further noted, the 371(c) of filing date is March 26, 2004 which is subsequent to the US filing date of this application of March 18, 2004. Furthermore, applicants note that the present application claims priority for Japanese Application No. 2003-072990, filed March 18, 2003.

For the foregoing reasons, applicants submit that Akiyama is not properly utilizable in rejecting claims of this application under 35 USC 102 or 35 USC 103 since Akiyama must first be available under 35 USC 102 in order to qualify for utilization under 35 USC 103.

Since Akiyama is not properly utilizable in rejecting claims of this application under 35 USC 102 and 35 USC 103, and Akiyama is utilized alone under 35 USC 102 and in combination with other cited art under 35 USC 103, applicants submit that all rejections as set forth by the Examiner necessary fall, and applicants submit that all claims present in this application patentably distinguish under 35 USC 102 and 35

USC 103 over the rejections over art as set forth by the Examiner in the office action of November 30, 2005.

In view of the above remarks, applicants submit that all claims present in this application should now be in condition for allowance and issuance of an action of favorable nature is courteously solicited.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 501.43642X00), and please credit any excess fees to such deposit account.

Respectfully submitted,

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